

# TEAYS VALLEY LOCAL SCHOOL DISTRICT

385 Circleville Avenue, Ashville, Ohio 43103-9417

Phone: 740-983-5000 Fax: 740-983-5000

www.teays-valley.k12.oh.us

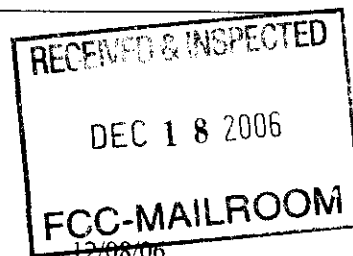
DOCKET FILE COPY ORIGINAL

Jeff Sheets, Superintendent

Bob Thompson, Assistant Superintendent

Stacy Overly, Treasurer

## Request for Appeal CC Docket No. 02-6



Robert Thompson  
385 Circleville Ave  
Ashville, Ohio 43103  
740.983.5011 (phone)  
740.983.4158 (fax)  
[bthompson@teays-valley.k12.oh.us](mailto:bthompson@teays-valley.k12.oh.us)

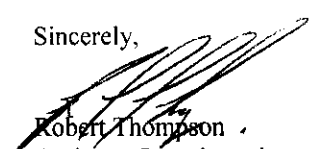
Letter of Appeal  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

This is a request to appeal a funding decision that denied Teays Valley Local School District (entity 129122) internet services for Funding Year 2006. Our internet access was denied for FRN 1363850 because the contact awards date of 2/8/06 is after the 471 for funding year 06-07 was filed.

The error occurred due to a misunderstanding and errors on my part. The first error occurred because a multi-year contract was signed in 2004 with FRN 1363850. In completing Form 471 for funding year 06, I should have referred to the Form 470 completed in 05 funding year because this was a multi year contract. The Form 470 application number for 05 funding year is (523200000504476). This should have been the number I referred to in filing my 06 Form 471. However, I referred to the Form 470 number from funding year 06 (785620000551148). This Form 470 application error is one of the reasons for the denial. The contract with internet provided 1363850 is a three year contract. The agreement period beginning July 1, 2005 and ending June 30, 2008. Please see attached document. Although there was communication with USAC (see attached) and I provided a copy of the full signed contract, I provided SLD with the wrong contract.

The second error occurred when PIA from Schools and Library Division asked me to fax a signed copy of the multi year contract with the service provider. I forwarded a contract we were working on with the service provider that never went into effect. Contract #1 with an effective date of 11/22/05 was the original contract signed with the service provider. Contract #2 dated January 25, 2006 and signed February 8, 2006 was written to replace contract #1 but never went into effect. Our service provider was planning to replace three, T-1 lines with fiber and provide the same services at a lower cost. The fiber connection never took place and the cost amounts were never reduced as specified in contract #2. If contract #2, had worked, I would have requested our 471 for funding year 06-07 be amended. All billing and agreements specified in contract #1 are valid contract. However; when PIA asked for a copy of the contract I accidentally sent him a copy of contract #2 by mistake. This caused the PIA to deny our funding request. We believe this a correctable error and are requesting a reversal of the decision.

Sincerely,

  
Robert Thompson  
Assistant Superintendent  
Teays Valley Local Schools

No. of Copies rec'd 0  
List A B C D E

Form 471 application number: 494694

Billed Entity Number (BEN) 129122

Billed Entity FCC RN: 0007473416

Applicant's Form Identifier: 06-07TV1

Form 470 Application number: 785620000551148

FRN: 1363850

Attached:

Copy of contract signed and dated with FRN 1363850 contract #1

Copy of a proposed contract with internet provider contract #2

Copy of email communication with USAC

Copy of decision on appeal USAC



Contract #1

**METROPOLITAN EDUCATIONAL COUNCIL  
SERVICE PROVIDER CONTRACT  
INTERNET SERVICE**

This agreement for the providing Internet Access service ("Agreement") is entered into on this 22<sup>nd</sup> day of November, 2004, between the Metropolitan Educational Council ("Provider") and Teays Valley Local School District ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is a regional educational center organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Providers the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

**I. DEFINITIONS:**

As used in this Agreement the following terms shall be defined as follows:

"Customer" shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

"Provider" shall mean the regional educational center.

"Services" shall mean all of the duties and ministrations affirmatively checked in Article III Performance of this Agreement.

"User" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

**II. TERM AND RENEWAL**

This Agreement shall be for the period beginning July 1, 2005 and ending June 30, 2008.

### **III. PERFORMANCE**

Provider shall furnish Customer internet access services as further described in attached Exhibit A.

### **IV. CHARGES AND PAYMENT**

Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to customer under this Agreement. Charges for the Services provided under this Agreement will be billed to Customer on an *annual* basis.

Payment of all invoices sent shall be due within thirty (30) days of the send out date on the Customer's receipt invoice. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the Provider in writing. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for fully payment. If the Customer is suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described service charges.

### **V. TERMINATION OF SERVICES**

If, for any reason, the Customer wishes to terminate any of the services described in Exhibit A, then the following provisions will apply:

- A. Customer shall send written notification to the Provider at least thirty (30) days in advance of the requested service termination date of its desire to terminate services.
- B. Upon receiving written notice, Provider shall order termination of the telecommunication line(s) at the Customer's premises.
- C. Customer agrees to be solely responsible to Provider for the following charges:
  - a. The pro rata annual contracted amount less the amount already paid by Customer during the current July 1<sup>st</sup> through June 30<sup>th</sup> period less the cost of the unused portion of the telecommunications line(s).
  - b. All third party vendor costs related to the de-installation of the service.

### **VI. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION**

- A. Providers shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the

following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users. 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.

**B.** Customer may utilize the Services provided for educational and educational administrative related activities only. Where the Services provided include access to the internet networks, Provider does not warrant that the functions of the internet network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.

**C.** Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.

**D.** CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.

**E.** Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider

deems to be in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Providers network and public networks including access to the Internet.

F. Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.

G. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

## **VII. PROPERTY**

A. All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

## **VIII. CONFIDENTIALITY OF INFORMATION**

B. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.

C. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.

D. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

## **IX. NOTICES**

A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth

below (or to such other addresses as the party may designate by notice to the other party hereto):

**1. If to Provider:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**2. If to Customer:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**B. GENERAL PROVISIONS**

- a. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
- b. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- c. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

- d. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- i. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- j. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.



By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

**CUSTOMER:**

Teays Valley Local School District

Printed name of Customer

  
Signature of Authorized Customer Representative

11/22/2004

Date

RON THORNTON  
Printed name of Authorized Customer Representative

\_\_\_\_\_  
Signature of Authorized Customer Representative

11/22/2004

Date

\_\_\_\_\_  
Printed name of Authorized Customer Representative

**PROVIDER:**

Metropolitan Educational Council

Printed name of Provider

  
Signature of Executive Director

11/23/2004

Date

Elmo G. Kallner

Printed name of Executive Director

## **EXHIBIT A**

### **INTERNET ACCESS SERVICES**

This exhibit is hereby made part of the Internet Access Services Agreement (the "Agreement") entered between the Metropolitan Educational Council and Teays Valley Local School District, Customer, as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

**1. Services**

The Services provided and their attendant costs are set forth on Schedule 1 attached hereto and incorporated herein by reference.

**2. Additional Charges**

Customer agrees to pay for any installation costs, if incurred, as a result of providing Services to Customer.

**3. Metropolitan Educational Council's Obligations**

- a) The Metropolitan Educational Council will provide sufficient training of Customer's personnel to permit Customer to perform all functions and procedures associated with the Internet Access connection.
- b) The Metropolitan Educational Council will plan and coordinate all activities incidental to the implementation of the internet access connection.
- c) The Metropolitan Educational Council will assume all responsibilities for the physical internet access system up to and including the router included in any internet access connection.
- d) The Metropolitan Educational Council will provide Internet Access Service. Internet Access Service is defined as the "[transmits] information as part of a gateway to an information service, where that transmission does not involve the generation or alteration of the content of information but may include data transmission, address translation, protocol conversion, billing management and introductory information content, and navigational systems that enable users to access information services that do not affect the presentation of such information services to users."

4. Customer's Obligations

- a) Customer will assume all responsibilities for all local area networks (LAN) connected to an internet access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b) Customer will provide surge suppression for all devices either directly or indirectly connected to the internet access connection. The surge suppression must meet UL1449 rating.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and implementation process of the internet access connection.
- d) Customer will provide the Metropolitan Educational Council with appropriate and sufficient space and electrical power to facilitate the internet access connection installation.
- e) Customer agrees not to connect any of its local area networks to alternative internet service providers without the approval of the Metropolitan Educational Council.
- f) Customer agrees not to resell any internet access services provided by the Metropolitan Educational Council.

CUSTOMER:

Teays Valley Local School District

Ron Thornton  
Signature

RON THORNTON  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

The Metropolitan Educational Council:

Elmo G. Kallner  
Signature of Executive Director

Elmo G. Kallner  
Print Name

### SUMMARY OF COSTS

Charges will be incurred for only those services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below.

[illegible]

Contract # 2

(2)



**METROPOLITAN EDUCATIONAL COUNCIL  
SERVICE PROVIDER CONTRACT  
INTERNET SERVICE**

This agreement for the provision of Internet Access service ("Agreement") is entered into on this 25th day of, January, 2006, between the Metropolitan Educational Council ("Provider") and Teays Valley Local School District ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is a regional educational center organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Providers the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

**I. DEFINITIONS:**

As used in this Agreement the following terms shall be defined as follows:

"Customer" shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

"Provider" shall mean the regional educational center.

"Services" shall mean all of the duties and ministrations affirmatively checked in Article III Performance of this Agreement.

"User" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

**II. TERM AND RENEWAL**

This Agreement shall be for the period beginning July 1, 2006 and ending June 30, 2011.

### **III. PERFORMANCE**

*Provider shall furnish Customer unbundled internet access services as further described in attached Exhibit A.*

### **IV. CHARGES AND PAYMENT**

Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to customer under this Agreement. Charges for the Services provided under this Agreement are set forth on Schedule 1 of attached Exhibit A. Charges will be billed to Customer on an *annual* basis.

Payment of all invoices sent shall be due within thirty (30) days of the send out date on the Customer's receipt invoice. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the Provider in writing. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for fully payment. If the Customer is suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described service charges.

### **V. FAILURE TO APPROPRIATE OR PAY FUNDS**

In the event that Customer shall fail to appropriate sufficient funds, or to pay any or all obligations under this agreement as when due, then Customer agrees to be responsible for the following charges:

- A.. The contracted annual amount in full for the balance of the current fiscal year (July1 – June 30), less the amount already paid by Customer for such fiscal year.
- B. Fifty per cent (50%) of the monthly telecommunications cost charged to Provider by the telecommunications provider on account of this Agreement for all remaining months and years of this Agreement.

### **VI. WARRANTIES AND LIMITATIONS ON LIABILITY**

- A. Providers shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users. 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type

service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.

**B.** Customer may utilize the Services provided for educational and educational administrative related activities only. Where the Services provided include access to the internet networks, Provider does not warrant that the functions of the internet network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.

**C.** Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.

**D.** Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes but is not limited to: 1) knowingly transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) knowingly transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) knowingly permitting or encouraging unauthorized access to the Providers network and public networks including access to the Internet.

**E.** Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.

- F. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

## **VII. PROPERTY**

- A. All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

## **VIII. CONFIDENTIALITY OF INFORMATION**

- B. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.
- C. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- D. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

## **IX. NOTICES**

- A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

### **1. If to Provider:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_



2. If to Customer:

Name: STACY OVERLY  
Address: 385 Circleville Ave  
City/State/Zip: Ashville, OH 43103  
Phone: 740 983 4111  
Facsimile: 740 983 4158  
E-mail: SOVERLY@TDS-VALLEY.K12.OA.US

B. GENERAL PROVISIONS

- a. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
- b. **Modification, Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- c. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
- d. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties

with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.

- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- i. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- j. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

## **EXHIBIT A**

### **INTERNET ACCESS SERVICES**

This exhibit is hereby made part of the Internet Access Services Agreement (the "Agreement") entered between the Metropolitan Educational Council and Teays Valley Local School District, Customer, as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

**1. Services**

The Services provided and their attendant costs are set forth on Schedule 1 attached hereto and incorporated herein by reference.

**2. Additional Charges**

Customer agrees to pay for any installation costs, if incurred, as a result of providing Services to Customer.

**3. Metropolitan Educational Council's Obligations**

- a) The Metropolitan Educational Council will provide sufficient technical training of Customer's personnel to permit Customer to perform all functions and procedures associated with the Internet Access connection.
- b) The Metropolitan Educational Council will plan and coordinate all activities incidental to the implementation of the internet access connection.
- c) The Metropolitan Educational Council will assume all responsibilities for the physical internet access system up to and including the router included in any internet access connection.
- d) The Metropolitan Educational Council will provide Internet Access Service. Internet Access Service is defined as that "[transmits] information as part of a gateway to an information service, where that transmission does not involve the generation or alteration of the content of information but may include data transmission, address translation, protocol conversion, billing management and introductory information content, and navigational systems that enable users to access information services that do not affect the presentation of such information services to users."

4. **Customer's Obligations**

- a) Customer will assume all responsibilities for all local area networks (LAN) connected to an internet access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b) Customer will provide surge suppression for all devices either directly or indirectly connected to the internet access connection. The surge suppression must meet UL1449 rating.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and implementation process of the internet access connection.
- d) Customer will provide the Metropolitan Educational Council with appropriate and sufficient space and electrical power to facilitate the internet access connection installation.
- e) Customer agrees not to connect any of its local area networks to alternative internet service providers without the prior approval of the Metropolitan Educational Council.
- f) Customer agrees not to resell any internet access services provided by the Metropolitan Educational Council.

CUSTOMER:

Teays Valley Local School District

Stacy L. Overly, Treasurer  
Signature

Stacy L. Overly, Treasurer  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

The Metropolitan Educational Council:

Elmo G. Kallner  
Signature of Executive Director

Elmo G. Kallner  
Print Name

**SCHEDULE 1****SUMMARY OF COSTS**

This exhibit is hereby made a part of the Agreement for 2006-11 by and between the Metropolitan Educational Council and Teays Valley Local School District. Charges will be incurred for only those services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below.

INTERNET ACCESS SERVICES DESCRIPTION	ANNUAL CHARGE	MONTHLY CHARGE
100mb MECNET Internet Access Service		
5 Buildings	\$53,100.00	
3 - Single Line T-1 Services		

By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

**CUSTOMER:**

Teays Valley Local School District

Printed name of Customer

Stacy L. Overly, Treasurer

Signature of Authorized Customer Representative

2/8/06  
Date

STACY L. OVERLY  
Printed name of Authorized Customer Representative

\_\_\_\_\_  
Signature of Authorized Customer Representative

\_\_\_\_\_  
Printed name of Authorized Customer Representative

**PROVIDER:**

Metropolitan Educational Council

Printed name of Provider

Elmo G. Kallner

Signature of Executive Director

January 25, 2006  
Date

Elmo G. Kallner  
Printed name of Executive Director

**Bob Thompson**

**From:** Holt Paul [pholt@sl.universalservice.org]  
**Sent:** Wednesday, May 10, 2006 8:45 AM  
**To:** bthompson@teays-valley.k12.oh.us  
**Subject:** TEAYS VALLEY App# 494694 (7-Day Ltr.)  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Due By:** Wednesday, May 17, 2006 12:00 AM  
**Flag Status:** Flagged



**Universal Service Administrative  
Company**

Schools & Libraries Division

May 10, 2006

Robert Thompson  
 TEAYS VALLEY LOCAL  
 Telephone:  
 Application Number

(740) 9834111  
 494694

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2006 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

1. For FRN 1363850, the Contract Award Date (11/22/2004) for the services requested is before the Allowable Contract Date (12/12/2005) of the cited Form 470.

The rules of this support mechanism require that the CAD be after the ACD. Please answer the following question, and provide the requested documentation as indicated:

Please provide a copy of the full contract, signed and dated by both parties, to verify the correct CAD, and also verify if the referenced Form 470 is the establishing Form 470 for the services to the entity on this Form 471. If the referenced Form 470 is NOT the establishing Form 470, please provide the 15-digit Form 470 Number that did establish the bidding for the FRN. The establishing Form 470 is the specific Form 470, which was posted for that particular service for 28 days, and pursuant to which a contract was signed or an agreement was entered into. For a request in the Basic Maintenance service category, it is possible that the establishing 470 was filed under an Internal Connections service category. The establishing 470 could have been posted by the State, if the requested services are being purchased off of a State Master Contract. If the contract is a State Master Contract, you do not have to submit a copy of the signed contract if that contract is available online or has already been submitted to

PIA. Please provide us with the contract name and number of the State Master Contract. If you have already submitted the relevant contract information in connection with another review, please provide the application number involved so that we can locate the documentation in our files.

2. For ASHVILLE ELEMENTARY SCHOOL, Entity # 46075 on block 4 of your Form 471 application, question #9 you checked Yes to PRE-K / JUVENILE JUSTICE / ADULT-ED.

If this is an error and you wish to confirm that there is **no** PRE-K / JUVENILE JUSTICE / ADULT-ED program(s) or students, please indicate here \_\_\_\_\_ and sign below.

Pre-K		Adult Education		Juvenile Justice	
Y/N	# of students	Y/N	# of students	Y/N	# of students
<u>Y</u>	<u>21</u>	<u>N</u>		<u>N</u>	

If there is a PRE-K / JUVENILE JUSTICE / ADULT-ED program, are residential facilities also present at this entity? Y/N N

PLEASE SIGN,

NAME: \_\_\_\_\_

TITLE: Assistant Supt

DATE: 5-11-06

3. For SCIOTO ELEMENTARY SCHOOL, Entity # 46107 on block 4 of your Form 471 application, question #9 you checked Yes to PRE-K / JUVENILE JUSTICE / ADULT-ED.

If this is an error and you wish to confirm that there is **no** PRE-K / JUVENILE JUSTICE / ADULT-ED program(s) or students, please indicate here \_\_\_\_\_ and sign below.

Pre-K		Adult Education		Juvenile Justice	
Y/N	# of students	Y/N	# of students	Y/N	# of students
<u>Y</u>	<u>12</u>	<u>N</u>		<u>N</u>	

If there is a PRE-K / JUVENILE JUSTICE / ADULT-ED program, are residential facilities also present at this entity? Y/N N

PLEASE SIGN,

NAME: \_\_\_\_\_

TITLE: Assistant Supt

DATE: 5-11-06

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**



Should you wish to cancel this application, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s); along with the application number and/or funding request number(s), and the complete name, title and signature of the authorized individual.

**Please send the required information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.**

Thank you for your cooperation and continued support of the Universal Service Program.

## Paul Holt

PIA Associate  
Schools and Libraries Division  
Program Integrity Assurance  
Phone: (973) 581-5379  
FAX: (973) 599-6521  
pholt@sl.universalservice.org



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2006-2007**

November 08, 2006

Robert Thompson  
Teays Valley Local School District  
385 Circleville Avenue  
Ashville, OH 43103-9417

Re: Applicant Name: TEAYS VALLEY LOCAL  
Billed Entity Number: 129122  
Form 471 Application Number: 494694  
Funding Request Number(s): 1363850  
Your Correspondence Received: October 02, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1363850  
Decision on Appeal: **Denied**  
Explanation:

- Upon thorough review of the appeal letter and relevant documents, USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed contract in place with your service provider. During the application review, the applicant was asked to provide copies of signed and dated contracts. In the response provided to USAC on May 11, 2006, the contract provided has a signature date of February 8, 2006. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form 471. In this case, you have not demonstrated that you have complied with FCC Rules; therefore, the appeal is denied

- USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC Rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. sec. 54.504(c). The FCC Rules further require that both beneficiaries and service providers must retain executed contracts, signed and dated by both parties. See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15824-26, FCC 04-190 para. 48 (rel. Aug. 13, 2004). The FCC has consistently upheld USAC's denial of funding when there is no contract in place for the funding request. See Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-256981, CC Docket No. 02-6, Order, 18 FCC Rcd. 22994, DA 03-3526 (rel. Nov. 5, 2003). The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at page 23.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

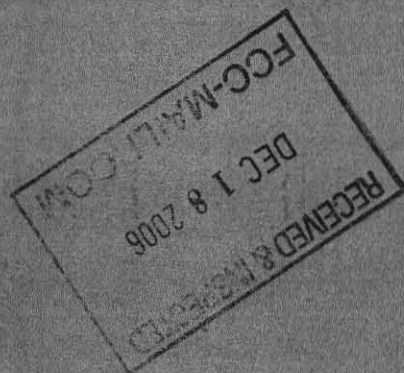
We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

Teays Valley Local School District  
385 Circleville Avenue  
Ashville, Ohio 43103-9417



**FIRST CLASS MAIL**



*TW-B204*

Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington DC 20554